UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,675	12/31/2003	Randall J. Macbeth	MFCP.110230	2766

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EXAMINER
MADAMBA, GLENFORD J

ART UNIT	PAPER NUMBER
2151	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	**Applicant(s)**
	10/748,675	MACBETH ET AL.
Office Action Summary	**Examiner**	**Art Unit**	
	Glenford Madamba	2151	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>12 September 2007</u>.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-6, 8-18, 20-30 and 32-36* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) _____ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

Response to Remarks and Amendments

1. This action is in response to remarks and claim amendments filed by Applicant's representative on September 12, 2007.

2. Applicant's remarks and claim amendments filed on September 12, 2007 have been considered but are now moot in light of the new grounds of rejection provided with this action.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 5, 6, 17, 18, 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yang, U.S. Patent US 6,444,840 in view of Barth et al (hereinafter Barth), U.S. Patent Publication US 2006/0123012 A1.

As per Claims 1, 13, and 25, Yang in view of Barth discloses a system for monitoring a

networked computer service for fault recovery, comprising:

an input interface (e.g., client 110) to receive network status data from a network

monitor monitoring a computer services network (e.g. site 150) [Fig. 1];

a control engine (e.g., Dispatcher 130), the control engine communicating with

the input interface to receive the network status data and automatically generate control

commands to dynamically adjust the set of features based on a fault condition (e.g.,

server overload or failure) [0010-0014] in the network status data [Fig. 1] for one or

more features within the set of features; and

an output interface (e.g. routing mechanism 135), communicating with the control

engine and the computer services network (site 150), the output interface

communicating the control commands (e.g., request migration and/or recovery) to the

computer services network to dynamically adjust the set of features by deactivating the

one or more features having a fault condition while maintaining active features in the set

of features to continue to provide the networked computer service [Fig. 1] [0008] [0010-

0014] [0020] [0025] [0034] [also Claim 1, pg. 6].

Additionally, while Yang discloses substantial features of the invention, as cited

above, the additionally recited feature of dynamically adjusting the set of features by

deactivating the one or more features having a fault condition while maintaining active

features in the set of features to continue to provide the networked computer service is

more expressly disclosed by Barth.

Barth discloses as his invention <u>a method and apparatus for a *dynamic*</u>

<u>*information connection engine*. User actions are detected on at least one client system,</u>

<u>and in response, a determination is made whether the user is *searching* for supported</u>

<u>information.</u> When the user is searching for supported information, information is

extracted electronically from a third party web site direct supplier connections, and

intermediate databases. Potential information suppliers are automatically selected in

response to the detected user search. <u>Queries are formulated from the user search and</u>

<u>transferred to each selected supplier over a network coupling.</u> The queries include a

request for information. <u>Responses are received from the suppliers, and the responses</u>

<u>are used to generate a result list for the user. The result list includes information and</u>

<u>query status information. Further, an *electronic link* may be provided to a web site of</u>

<u>each supplier from which the information was derived</u> [Abstract].

In particular Barth discloses the above additionally recited feature of dynamically

adjusting the set of features by deactivating the one or more features having a fault

condition while maintaining active features in the set of features to continue to provide

the networked computer service [0009-0013] [0028-0033] [0089-0090] (i.e.,

'deactivating' *electronic links {URLS}* and/or *purchasing controls* or feature of the

resultant display) [0112-0113] [Figs. 2-5].

It would thus be obvious to one of ordinary skill in the art at the time of the invention to combine and/or modify Yang's invention with the above additional recited feature for the motivation of providing a system that efficiently gathers and evaluates information from multiple electronic sources and presents relevant information to potential buyers, sellers, or traders [0003] [0012].

Claims 13 and 25 recite the same limitations as claim 1, are distinguished only by their statutory category, and thus rejected on the same basis.

As per Claims 2, 14, and 26, Yang discloses a system according to claim 1, wherein the computer services network comprises an Internet service (Internet 120 / web service) [0001-0002].

Claims 14 and 26 recite the same limitations as claim 2, are distinguished only by their statutory category, and thus rejected on the same basis.

As per Claims 3, 15, and 27, Yang discloses a system according to claim 2, wherein the Internet service comprises a search service (e.g., request for "Best site of the Month , e-commerce services, etc.) [0009].

Claims 15 and 27 recite the same limitations as claim 3, are distinguished only by their statutory category, and thus rejected on the same basis.

As per Claims 4, 16, and 28, Yang discloses a system according to claim 1, wherein the

network status data comprises at least one of page latency data, processor utilization

data, connection data and storage data (e.g., sluggish client response, server overload)

[0004].

Claims 16 and 28 recite the same limitations as claim 4 are distinguished only by

their statutory category, and thus rejected on the same basis

As per Claims 8, 20, and 32, Yang in view of Barth discloses a system according to

claim 7, wherein the control engine reactivates at least a portion of the one or more

features upon restoration of predetermined network status data.

Additionally, while Yang discloses substantial features of the invention, as cited

above, the additionally recited feature of wherein the control engine reactivates at least

a portion of the one or more features upon restoration of predetermined network status

data is more expressly disclosed by Barth.

Barth discloses as his invention <u>a method and apparatus for a *dynamic*</u>

<u>*information connection engine*. User actions are detected on at least one client system,</u>

<u>and in response, a determination is made whether the user is *searching* for supported</u>

<u>information.</u> When the user is searching for supported information, information is

extracted electronically from a third party web site direct supplier connections, and

intermediate databases. Potential information suppliers are automatically selected in

response to the detected user search. <u>Queries are formulated from the user search and</u>

<u>transferred to each selected supplier over a network coupling</u>. The queries include a

request for information. <u>Responses are received from the suppliers, and the responses</u>

<u>are used to generate a result list for the user. The result list includes information and</u>

<u>query status information. Further, an *electronic link* may be provided to a web site of</u>

<u>each supplier from which the information was derived</u> [Abstract].

In particular Barth discloses the above additionally recited feature of wherein the

control engine reactivates at least a portion of the one or more features upon restoration

of predetermined network status data (e.g., 'actifying' front end servers as 'dead' or

'alive') [0089-0090] (i.e., 'deactivating' *electronic links {URLS}* and/or *purchasing*

controls or feature of the resultant display) [0112-0113] [Figs. 2-5].

It would thus be obvious to one of ordinary skill in the art at the time of the

invention to combine and/or modify Yang's invention with the above additional recited

feature for the motivation of providing a system that efficiently gathers and evaluates

information from multiple electronic sources and presents relevant information to

potential buyers, sellers, or traders [0003] [0012].

Claims 20 and 32 recite the same limitations as claim 8, are distinguished only by

their statutory category, and thus rejected on the same basis

As per Claims 9, 21, and 33, Yang in view of Barth discloses a system according to claim 7, wherein the control engine alters the operation of another service in compensation for the affected service [0024-0025].

Additionally, while Yang discloses substantial features of the invention, as cited above, the additionally recited feature of wherein the control engine alters the operation of another service in compensation for the affected service is more expressly disclosed by Barth.

Barth discloses as his invention a method and apparatus for a *dynamic information connection engine*. User actions are detected on at least one client system, and in response, a determination is made whether the user is *searching* for supported information. When the user is searching for supported information, information is extracted electronically from a third party web site direct supplier connections, and intermediate databases. Potential information suppliers are automatically selected in response to the detected user search. Queries are formulated from the user search and transferred to each selected supplier over a network coupling. The queries include a request for information. Responses are received from the suppliers, and the responses are used to generate a result list for the user. The result list includes information and query status information. Further, an *electronic link* may be provided to a web site of each supplier from which the information was derived [Abstract].

In particular Barth discloses the above additionally recited feature of wherein the control engine alters the operation of another service in compensation for the affected

service (e.g., 'actifying' front end servers as 'dead' or 'alive') [0089-0090] (i.e.,

'deactivating' *electronic links {URLS}* and/or *purchasing controls* or feature of the

resultant display) [0112-0113] [Figs. 2-5].

It would thus be obvious to one of ordinary skill in the art at the time of the

invention to combine and/or modify Yang's invention with the above additional recited

feature for the motivation of providing a system that efficiently gathers and evaluates

information from multiple electronic sources and presents relevant information to

potential buyers, sellers, or traders [0003] [0012].

Claims 21 and 33 recite the same limitations as claim 9, are distinguished only by

their statutory category, and thus rejected on the same basis

As per Claims 10, 22, and 34, Yang discloses a system according to claim 1, wherein

the control engine comprises a rules-based decisioning engine (e.g., categorizing web

requests as either, static, dynamic, or session with corresponding solution of migration

and recovery) [0035].

Claims 22 and 34 recite the same limitations as claim 10, are distinguished only

by their statutory category, and thus rejected on the same basis

As per Claims 11, 23, and 35, Yang discloses a system according to claim 10, wherein the rules-based decisioning engine interfaces to a control database (e.g., storing of TCP states) [0029] (e.g. URL table) [0031-0032] storing at least one of the network status data and a set of service fault rules (server overload or failure).

Claims 23 and 35 recite the same limitations as claim 7, are distinguished only by their statutory category, and thus rejected on the same basis

As per Claims 12, 24, and 36; Yang discloses a system a system according to claim 1, further comprising a manual override selector, the manual override selector permitting an operator to override the control commands generated by the control engine (e.g., intentionally disabling servers) [0066].

Claims 24 and 36 recite the same limitations as claim 7, are distinguished only by their statutory category, and thus rejected on the same basis

2. Claims 5, 6, 17, 18, 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yang, U.S. Patent US 6,444,840 in view of Barth et al (hereinafter Barth), U.S. Patent Publication US 2006/0123012 A1 and in further view of DeBettencourt et al (hereinafter DeBettencourt), U.S. Patent Publication US 2002/0042823 A1.

As per Claims 5, 17, and 29, Yang in view of Barth and in further view of DeBettencourt discloses a system according to claim 1, wherein the fault condition comprises a failure of the network status data to meet a performance threshold [DBettencourt: Abstract].

While the combination of Yang and Barth disclose substantial features of the invention such as the system of claim 1, and in particular a system for monitoring a networked computer service for fault recovery, the additional feature of the system wherein the fault condition comprises a failure of the network status data to meet a performance threshold is more expressly disclosed by DeBettencourt in a related endeavor.

DeBettencourt discloses as his invention a web service system that allows a system operator to manage multiple web servers [0001]. In particular, DeBettencourt discloses the additional feature of the system wherein the fault condition comprises a failure of the network status data to meet a *performance threshold* (e.g., error and/or component failure thresholds) [Abstract].

It would thus be obvious to one of ordinary skill in the art at the time of the invention to modify the combined invention of Yang and Barth with the added feature of the system wherein the fault condition comprises a failure of the network status data to meet a *performance threshold*, as disclosed by DeBettencourt, for the motivation of providing management capability in automatic error recovery and recovery from component failures or network environmental problems [Abstract] [0002] [0010].

Claims 17 and 29 recite the same limitations as claim 5, are distinguished only by their statutory category, and thus rejected on the same basis

As per Claims 6, 18, and 30, Yang (in view of Barth and in further view of DeBettencourt) discloses a system according to claim 5, wherein the performance threshold comprises a minimum response time for a user of the networked computer services (e.g., client response time) [0004].

Claims 18 and 30 recite the same limitations as claim 6, are distinguished only by their statutory category, and thus rejected on the same basis.

Conclusion

1.   Applicant's amendment necessitated the new ground(s) of rejection presented in this Office Action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP 706.06(a).
Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

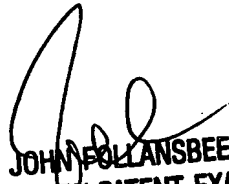than SIX MONTHS from the mailing date of this final action.

1. Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Glenford Madamba whose telephone number is 571-

272-7989. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Valencia Wallace Martin can be reached on 571-272-3440. The fax phone

number for the organization where this application or proceeding is assigned is 703-

872-9306.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

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Business Center (EBC) at 866-217-9197 (toll-free).

Glenford Madamba
Examiner
Art Unit 2151

JOHN FOLLANSBEE
SUPERVISORY PATENT EXAMINER
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